



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 105

[Docket No. USCG-2023-0265]

Transportation Worker Identification Credential -- Facility Reader Requirement; Conforming Amendment

AGENCY: Coast Guard, DHS.

ACTION: Final rule; conforming amendments.

SUMMARY: The Coast Guard is amending its Risk Group A facility regulations so that their provisions to implement Transportation Worker Identification Credential (TWIC) electronic inspection requirements by May 8, 2023, is changed to May 8, 2026. This will revise our regulations to conform with recently passed legislation. The James M. Inhofe National Defense Authorization Act for Fiscal Year 2023 (Authorization Act) was enacted December 23, 2022. A provision within the Authorization Act directs the Secretary of Homeland Security to not implement TWIC reader regulations for certain facilities before May 8, 2026. This conforming amendment will have no substantive effect. Controlling statutory authority already nullifies the May 8, 2023, implementing dates in our regulations. We note there is a separate ongoing rulemaking to address whether the implementation date should remain May 8, 2026, or be moved to a later date. The Authorization Act was enacted after the Coast Guard published the proposed rule for that separate rulemaking.

DATES: This final rule is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: For information about this document

or technical inquiries, call or email Lieutenant William Gasperetti, U.S. Coast Guard; telephone 202-372-1139; email William.N.Gasperetti@uscg.mil. General information and press inquiries: Contact Chief Warrant Officer 3 Kurt Fredrickson, U.S. Coast Guard; telephone 202-372-4619; email Kurt.N.Fredrickson@uscg.mil.

SUPPLEMENTARY INFORMATION:

On August 23, 2016, the Coast Guard published the Transportation Worker Identification Credential (TWIC)--Reader Requirements final rule (81 FR 57652). Among other things, it added 33 CFR 105.253 to 33 CFR part 105. Section 105.253 identifies certain facilities as being in Risk Group A. And § 105.255 imposes certain electronic TWIC inspection requirements for facilities in Risk Group A.

The Coast Guard last amended the list of facilities in Risk Group A in 2020 through the TWIC—Reader Requirements; Delay of Effective Date final rule (85 FR 13493, March 9, 2020). That rule expanded the categories of facilities in Risk Group A and inserted implementation dates for each category. The facilities identified in § 105.253(a)(2) through (4) were given a May 8, 2023, implementation date. And those same three categories of facilities correspond to what are called “covered facilities” in Sec. 11804 of the Authorization Act that was enacted December 23, 2022 (Pub. L. 117-263, 136 Stat 2395).

The Authorization Act directs the Secretary not to implement the 2016 TWIC Reader Requirements rule “for covered facilities before May 8, 2026.” The Authorization Act identifies covered facilities as:

- Facilities that handle Certain Dangerous Cargoes in bulk and transfer such cargoes from or to a vessel;
- Facilities that handle Certain Dangerous Cargoes in bulk, but do not transfer it from or to a vessel; and
- Facilities that receive vessels carrying Certain Dangerous Cargoes in bulk

but, during the vessel-to-facility interface, do not transfer it from or to the vessel.

And these three categories are identical to facilities identified in paragraphs (a)(2) through (4) of 33 CFR 105.253, a section established by the 2016 TWIC Reader rule and amended by the 2020 Reader Delay rule. This rule changes the implementation date in those three paragraphs from May 8, 2023, to May 8, 2026, thereby conforming these regulations with the Authorization Act.

This conforming amendment to 33 CFR 105.253 will have no substantive effect. The controlling statutory authority enacted December 23, 2022, has nullified the May 8, 2023, implementing dates in our regulations. The Coast Guard may not implement requirements in § 105.253(a)(2) through (4) before May 8, 2026.

Two weeks before the Authorization Act was enacted, the Coast Guard published a notice of proposed rulemaking (NPRM) entitled “Transportation Worker Identification Credential (TWIC)-Reader Requirements; Second Delay of Effective Date” (87 FR 74563, December 6, 2022). In it we proposed to change the implementation dates in § 105.253(a)(2) through (4) to May 8, 2026, and requested comments on whether we should extend the date as late as May 8, 2029. In that rulemaking we are considering comments received on that proposed rule and other relevant matter presented, including the Authorization Act.

We do not anticipate issuing a final rule in that rulemaking until after May 8, 2023. In that rulemaking we will consider either keeping the implementation date introduced by this rule, May 8, 2026, or changing it to an even later date. To view the status of that rulemaking, TWIC--Reader Requirements; Second Delay of Effective Date, search for RIN 1625-AC80 in the Unified Agenda via www.reginfo.gov.

The Coast Guard is issuing this final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without

prior notice and opportunity to comment when the agency for good cause finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a NPRM with respect to this rule. This rule simply conforms the regulations with the applicable statute, notice and comment procedures are unnecessary. We have referenced the separate, ongoing rulemaking that will address whether the implementing date in our regulations should be changed to a date beyond the earliest date, May 8, 2026, permitted by the Authorization Act.

Also, we find good cause under provisions in 5 U.S.C. 553(d)(3) to make this rule effective upon publication because delaying the effective date is unnecessary and contrary to the public interest. Given the nullification of the May 6, 2023 date by the Authorization Act, changing the date immediately will have no effect on the public. In addition, waiting 30 days after publication to remove the conflicting dates from § 105.253(a)(2) through (4) is contrary to the public’s interest in having access to accurate regulations.

We have analyzed this final rule under Department of Homeland Security Management Directive 023-01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have made a determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. A Record of Environmental Consideration supporting this determination is available in the docket. This rule is categorically excluded under paragraph L54 of Appendix A, Table 1 of DHS Instruction Manual 023–01(series). Paragraph L54 pertains to regulations that are editorial or procedural.

List of Subjects

33 CFR Part 105

Maritime security, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons listed in the preamble, the Coast Guard amends 33 CFR part 105 as follows:

PART 105 -- MARITIME SECURITY: FACILITIES

1. The authority citation for part 105 continues to read as follows:

Authority: 46 U.S.C. 70034, 70103, 70116; sec. 811, Pub. L. 111-281, 124 Stat. 2905 (46 U.S.C. 70103 note); 33 CFR 1.05-1, 6.04-11, 6.14, 6.16, and 6.19; DHS Delegation No. 00170.1, Revision No. 01.3.

2. In § 105.253, paragraphs (a)(2) through (4), remove the date “May 8, 2023”, and add, in its place, the date “May 8, 2026”.

Dated: April 12, 2023.

J. E. McLeod,
Acting Chief,
Office of Regulations and Administrative Law.
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